

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ELVIS LEE CUNNINGHAM,

Petitioner,

vs.

CHAD HUNT and
BUFFALO COUNTY JAIL,

Respondents.

8:20CV436

MEMORANDUM AND ORDER

This matter comes for initial review of a § 2241 habeas petition filed by Mr. Cunningham. He is a pretrial detainee who complains his bail bond was set too high. I conduct this initial review of the petition pursuant to 28 U.S.C. § 2243 and Rule 1(b) of the *Rules Governing Section 2254 Cases in the United States District Courts* which allows the court to apply Rule 4 of those rules to a section 2241 action.

The petition attacks the pretrial detention of Petitioner and without spending more time than necessary, it is sufficient to write that: “[F]ederal habeas corpus does not lie, absent ‘special circumstances,’ to adjudicate the merits of an affirmative defense to a state criminal charge prior to a judgment of conviction by a state court.” *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 489 (1973). No such special circumstances are shown here. Nothing appears untoward.

Because “the detention complained of arises from process issued by a state court,” Petitioner must obtain a certificate of appealability. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b)(1); *see also Hoffler v. Bezio*, 726 F.3d 144, 153 (2d Cir. 2013) (collecting cases of courts that ruled a state prisoner who petitions for habeas relief under 28 U.S.C. § 2241 must obtain a certificate of appealability). The standards for certificates (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set forth in *Slack v. McDaniel*, 529 U.S. 473,

484-485 (2000). I applied the appropriate standard and determined that Petitioner is not entitled to a certificate of appealability.

IT IS ORDERED that:

1. The petition for writ of habeas corpus under § 2241 (Filing 1) is dismissed without prejudice. No certificate of appealability has been or will be issued.

2. The court will enter judgment by separate document.

Dated this 3rd day of November, 2020.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge